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as of the conflicts between good men, that it is due to imperfect moral apprehension on one side or on both.

When the individual conscience is in doubt, recourse is generally had to some external authority. This ought to be the recorded moral experience of the past, as summed up by the great moral pioneers of all ages and countries. It should be looked for, not in the laws set up by any one body of men, but, so far as possible, in the actual moral tradition and practice of mankind, interpreted according to the circumstances of the inquirer.

In the sphere of intellect, on the other hand, authority is generally to be looked for in the utterances of the living leaders of intellectual life; I say the living leaders, because the conclusions and discoveries of the past are generally embodied in record and practice, and the demand for fresh light can only be met by the men who are actually engaged in the intellectual labors of the age.

New intellectual results are more readily accepted than new moral results, because a change in thought may easily take place without any serious social displacement, while a change in conduct, if hastily adopted, cannot possibly do so. And, in any case, the final moral consummation can only be realized by a series of conflicts, perhaps deadly and tragical. But these conflicts are, after all, healthy and natural, for the *odium morale*, like the *odium theologicum*, is only an evidence of the seriousness with which the combatants realize their object.

H. NETTLESHIP.

DISCUSSIONS.

THE THEORY OF PUNISHMENT.

IN the last number of this JOURNAL, two articles were devoted to the discussion of this question: "The Theory of Punishment," by the Rev. Hastings Rashdall, and "The Prevention of Crime," by Dr. Tönnies, of the University of Kiel. Both articles may be taken as representative of the protest against the older or retributive theory, and of the

demand for the substitution for it of the "deterrent" and "reformatory" theories. The change in our view of punishment, urged by these writers, is one which a growing number, not only of ethical thinkers, but also of practical philanthropists, hold to be necessary. The new "Science of Criminology," though not the International Criminological Association, is founded upon the theory that crime is "a pathological phenomenon," a "disease," a form of "insanity," an "inherited or acquired degeneracy."* The proper treatment of the criminal is, accordingly, that which seeks his cure rather than his punishment. Prisons must be superseded by hospitals, asylums, and reformatories.

Now, an advance in human feeling, as well as in intelligence, is to be seen in this movement, both in its theoretical and in its practical aspects; an advance from the hard, blind desire for justice and the unrelenting and unreasonable spirit of vindictiveness to a gentler and wiser humanity. *Summum jus summa injuria*. Besides, society is now so securely organized that it can afford to be not only just, but generous as well. The question which I wish to raise is, whether the newer and the older views of punishment are mutually exclusive, and, if not, what is their relation to one another. I wish to ask whether the *substitution* of the deterrent and reformatory for the retributive view is ethically sound, or whether, in our recoil from the older view, we are not in danger of going to the opposite extreme, and losing the "seed of truth" in that "evil thing."

We must acknowledge, to begin with, that the new theory can point to many facts for its basis. The general principle of heredity is operative in the sphere of crime and vice no less than in that of virtue. We might almost say that the criminal "is born, not made," or, rather, that he is *more* born than made. Crime seems to be almost as "instinctive" in some natures as goodness is in others. This instinctive tendency to evil, developed by favorable circumstances or "environment,"

* Cf. Dr. Donaldson, "Ethics as applied to Criminology," in the *Journal of Mental Science*, January, 1891.

blooms in the criminal act and in the life of crime. There is a criminal class, a kind of caste, which propagates itself. Crime is a profession, with a "code of honor" and an etiquette of its own, almost a vocation, calling for a special aptitude, moral and intellectual. Have we not here a great "pathological phenomenon," a "disease" to be cured, not punished?

But we cannot carry out the "pathological" idea. It is only an analogy or metaphor after all, and, like all metaphors, may easily prove misleading, if taken as a literal description of the facts. We distinguish cases of "criminal insanity" from cases of "crime" proper. In the former, the man is treated as a patient, is confined or restrained, is "managed" by others. But he is, by acknowledgment, so much less a *man* because he may be treated in this way; he is excused for that which in another would have been punished as a crime; he is not held accountable for his actions. The kleptomaniac, for example, is not punished, but excused. Are we to say that the difference between these actions and crimes proper is only one of degree, and that the criminal is always a pathological or abnormal specimen of humanity? Do all criminals "border close on insanity"? Even if so, we must recognize, among bad as well as among good men, a border-line between the sane and the insane; to resolve all badness into insanity does not conduce to clear thinking. A point may indeed be reached in the life of crime as in the life of vice generally, after which a man shall cease to be himself, and may therefore be treated as a "thing" rather than as a "person;" a point after which, self-control being lost, external control must take its place. But normal crime, if it has anything to do with insanity, is rather its cause than its result.

To reduce crime to a "pathological phenomenon" is to sap the very foundations of our moral judgments; merit as well as demerit, reward as well as punishment, are thereby undermined. Such a view may be scientific; it is not ethical, for it refuses to recognize the commonest moral distinctions. After all these explanations have been given, there is always an unexplained residuum, the man himself. A man knows himself from the inside as it were; and a man does not excuse *himself*

on such grounds. Nor would the majority of men, however "criminal," be willing to have their crimes put down to the account of "insanity"; most men would resent such a rehabilitation of their morals at the expense of their "intellects."

This leads us to remark a second impossibility in the theory, viz.,—that the ordinary criminal, whether he is a pathological specimen or not, will not submit to be treated as a "patient" or a "case." For he, like yourself, is a *person*, and insists on being respected as such; he is not a *thing* to be passively moulded by society according to *its* ideas, either of its own convenience or of his good. Even the criminal man will not give up his self-control, or put himself in your hands and *let* you cure him. His will is his own, and he alone can reform himself. He will not become the patient of society to be operated upon by it. The appeal, in all attempts at reformation, must be to the man himself; his sanction must be obtained, and his co-operation secured, before reformation can begin. He is not an automaton, to be regulated from without. The State cannot annex the individual; be he criminal or saint, his life is his own and its springs are deep within. It is a truism to say, but it has to be repeated in the present connection, that all moral control is ultimately self-control.

In virtue of his manhood or personality, then, the criminal must be convinced of the righteousness of the punishment. Possessing, as he does, the universal human right of private judgment, the right to question and criticise according to his own inner light, he must be made to see that the act of society *is* a punishment or retribution, and to accept it as such; he must see the *righteousness* of the punishment before it can work out in him its peaceable *fruits* of righteousness. Here, in the force of this inner appeal, in such an awakening of the man's slumbering conscience, lies the ethical value of punishment. Without this element, you have only a superficial view of it as an external force operating upon the man. Such a violent procedure may be necessary, especially in the earlier measures of society for its own protection. But it is not to be taken as the type of penal procedure, nor is it effective beyond a very narrow range. A man may be restrained in this

way from a particular act of crime on a particular occasion ; but the criminal nature in him is not touched, the criminal instincts are not extirpated,—they will bloom again in some other deed of crime. The deepest warrant for the effectiveness of punishment as a deterrent and reformative agent is found in its moral basis as an act of retribution. True reformation comes only with the acceptance of the punishment, by mind and heart, as the fruit of the act. For punishment thus becomes a kind of revelation to the man of the true significance of his character and life. A man may thus be *shocked* into a better life. For “accidental” calamity, or for suffering which he has not brought upon himself, a man does not condemn himself. Such self-condemnation comes only with insight into the retributive nature of the calamity. It is just this element of retribution that converts “calamity” or “misfortune” into “punishment.” Mr. Rashdall virtually acknowledges this when he admits that the “conviction of the external strength of the moral law will not make a man morally better, unless the external judgment is ratified and confirmed by the appellate tribunal of his own conscience.” That is to say, the judgment of society upon the man must become the judgment of the man upon himself, if it is to be effective as an agent in his reformation. This private re-enactment of the social judgment comes with the perception of retribution.

But apart from all argument, the fact and the truth of retribution lie too deep in the experience of mankind to be eradicated. The idea of retribution is the root-idea of tragedy, ancient and modern. By the Greeks as well as by the Hebrews any breach of the moral order, which was considered as divine, was regarded as fraught with inevitable disaster. “Fate,” like “Jehovah,” was “a Power which made for righteousness.” Sin was conceived by the Hebrews as a “transgression” of divine law, by the Greeks as *ὑβρις*, or a going beyond the “measure” set by the gods to human life. By both punishment was regarded as the vindication or re-establishment of the broken order. On the Shakespearian stage we see again and again the same drama being played, the same inevitable sequence of suffering upon sin. Even Mill

acknowledges that the idea is at the basis of the modern "sentiment of justice," and that "it is entitled to consideration in a world like ours in which punishment is really necessary." * Mill, it is true, calls the sentiment a mere "animal impulse;" but that is no real disparagement, for all our natural impulses may be so described,—they all need to be "moralized." However we may interpret it, the conception of retribution is "an inextinguishable element of the moral consciousness."

But even the Greeks saw that the divine punishments are not *merely* retributive, but purifying, and, in a sense, redemptive as well. "For Elektra and Antigone we feel that suffering has purified the character. Antigone dies, but for Elektra the curse of the race has spent itself in suffering; her spirit is moulded into sympathy with law and the government of the world." † Punishment is not a mere barren vindication of the divine order; it has an "effect on character," and moulds *that* to order. And now that Christianity has brought home to us this brighter side of punishment, this beneficent possibility in all suffering, it is still less philosophical to separate the retributive from the reformatory purpose of punishment. The question is not, as Mr. Rashdall states it, "whether, *apart* from its effects, there would be any moral propriety in the mere infliction of pain for pain's sake." Why separate the act from its "effects" in this way? In reality they are inseparable. The punishment need not be "for the sake of punishment, and for no other reason;" it need not be "modified for utilitarian reasons." The total conception of punishment may contain various elements indissolubly united. The question is, Which is the fundamental; out of which do the others grow? The answer is contained in the articles of the International Criminological Association, as quoted by Dr. Tönnies: "Punishment is an act of justice, and the essence of punishment is retribution. From this stand-point, satisfaction is the primary object of punishment, and the other objects include reforma-

* "Examination of Hamilton's Philosophy," p. 594, note. Cf. "Utilitarianism," chap. v.

† Professor Fairbanks in *International Journal of Ethics*, October, 1891 p. 87.

tion and deterrence." Nor do I see that such a theory of punishment is open to the charge of "syncretism." I should rather call it synthetic and concrete, as taking account of all the elements and exhibiting their correlation. Might we not sum up these elements in the word "discipline," meaning thereby that the end of punishment is so to bring home to a man such a sense of guilt as to work in him a deep repentance for the evil past, and a new obedience for the time to come?

Whether, or how far, such a conception of punishment can be carried out by the state is another question. Its realization would mean that the state should stand to the individual *in loco parentis*,—that the state is the great moral educator. Such a "paternal" function is, at any rate, no less practicable for the state than the curative function assigned to it by the theory we have been considering; for the latter function, to be effectively discharged, would imply an exhaustive "diagnosis" of each criminal "case." But we are coming once more to realize, what the Greeks realized so perfectly, that the state has a moral end, that its function is not the merely negative or "police" one of protection of individual from individual, but the moral education and development of the individual himself. It is, indeed, mainly to the external and inadequate modern conception of the state that we must trace the external and, I have sought to show, inadequate view of punishment as primarily deterrent, and (even when reformatory) undertaken for the protection of society from the individual rather than in the interests of the individual himself. Civil punishment is, or ought to be, undertaken in the interests of the moral individual; it is one of the arrangements of the state, which is the individual's moral "sphere." Deepest of all, such punishment is a vindication of that moral order, of which the civil order is a part. And although the punishment by the state is at best but a clumsy imitation of the subtler and far more just punishment of nature or of God, clumsier and less just even than the undefined social penalties, it is yet an all-important factor in the moral development of the individual. In all punishment, domestic, social and even civil, justice should be tempered with mercy and compassion. Does not

nature, if she punishes, also heal, and with a tenderness all her own? And has not Christianity taught us that forgiveness may do what punishment cannot? Yet we must remember that there is a moral order, of which the physical and the civil orders are parts, and that any breach of that order must be rectified. Such rectification *is* punishment.

The view of punishment which has been under discussion is one among other manifestations of the present tendency of ethical thought to "explain" the moral man by resolving him into certain forces or factors. But *a man's a man*, and is not to be "explained." Neither the intellectual nor the moral man, neither the saint nor the blackguard, is to be resolved into "factors of evolution." You shall never reduce immorality, any more than morality, to an "exact science." Human nature is not "exact." The new "Science of Criminology" is a part of Mill's "Science of Ethology," the impossibility of which was convincingly shown by Mr. Ward in the July number of this JOURNAL.

JAMES SETH.

DALHOUSIE COLLEGE.

THE LABOR CHURCH IN MANCHESTER.

MR. JOHN TREVOR, formerly assistant to Mr. P. H. Wicksteed in London, and now in charge of the Upper Brook Street Free Church in Manchester, has recently started an institution of a somewhat novel character. He calls it "Labor Church." What he means by this may be best gathered from the following account, taken from a circular which he issued last July:

"The churches are making great efforts to bring religion into the lives of the people, and these efforts have in many directions met with considerable success. This has been especially the case where those leading the movement have recognized the fact that religion must affect not only the personal but also the social condition of those who are influenced by it. A new confidence in religious teachers has been awakened among the working classes, and a new hope is arising that the churches may be able to give them some practical help in improving their lives.

"While this is undoubtedly the case, those who have been most active in promoting popular services, and the various social enterprises now considered